

ASSEMBLY, No. 3798

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED APRIL 5, 2018

Sponsored by:

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District 36 (Bergen and Passaic)

Assemblyman TIM EUSTACE

District 38 (Bergen and Passaic)

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

SYNOPSIS

Revises “New Jersey Smoke-Free Air Act” to prohibit smoking at public beaches and parks.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 4/6/2018)

A3798 CALABRESE, EUSTACE

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1 AN ACT concerning smoking at public beaches and parks, and
2 amending and supplementing P.L.2005, c.383.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. Section 2 of P.L.2005, c.383 (C.26:3D-56) is amended to
8 read as follows:

9 2. The Legislature finds and declares that:

10 a. Tobacco is the leading cause of preventable disease and
11 death in the State and the nation;

12 b. Tobacco smoke constitutes a substantial health hazard to the
13 nonsmoking majority of the public;

14 c. Electronic smoking devices have not been approved as to
15 safety and efficacy by the federal Food and Drug Administration,
16 and their use may pose a health risk to persons exposed to their
17 smoke or vapor because of a known irritant contained therein and
18 other substances that may, upon evaluation by that agency, be
19 identified as potentially toxic to those inhaling the smoke or vapor;

20 d. The separation of smoking and nonsmoking areas in indoor
21 public places and workplaces does not eliminate the hazard to
22 nonsmokers if these areas share a common ventilation system;

23 e. The prohibition of smoking at public parks and beaches
24 would better preserve and maintain the natural assets of this State
25 by reducing litter and increasing fire safety in those areas, while
26 lessening exposure to secondhand tobacco smoke and providing for
27 a more pleasant park or beach experience for the public; and

28 **[e.]** f. Therefore, subject to certain specified exceptions, it is
29 clearly in the public interest to prohibit the smoking of tobacco
30 products and the use of electronic smoking devices in all enclosed
31 indoor places of public access and workplaces and at all public
32 parks and beaches.

33 (cf: P.L.2009, c.182, s.1)

34

35 2. Section 3 of P.L.2005, c.383 (C.26:3D-57) is amended to
36 read as follows:

37 3. As used in this act:

38 "Bar" means a business establishment or any portion of a
39 nonprofit entity, which is devoted to the selling and serving of
40 alcoholic beverages for consumption by the public, guests, patrons
41 or members on the premises and in which the serving of food, if
42 served at all, is only incidental to the sale or consumption of such
43 beverages.

44 "Cigar bar" means any bar, or area within a bar, designated
45 specifically for the smoking of tobacco products, purchased on the

EXPLANATION – Matter enclosed in bold-faced brackets **[thus] in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 premises or elsewhere; except that a cigar bar that is in an area
2 within a bar shall be an area enclosed by solid walls or windows, a
3 ceiling and a solid door and equipped with a ventilation system
4 which is separately exhausted from the nonsmoking areas of the bar
5 so that air from the smoking area is not recirculated to the
6 nonsmoking areas and smoke is not backstreamed into the
7 nonsmoking areas.

8 "Cigar lounge" means any establishment, or area within an
9 establishment, designated specifically for the smoking of tobacco
10 products, purchased on the premises or elsewhere; except that a
11 cigar lounge that is in an area within an establishment shall be an
12 area enclosed by solid walls or windows, a ceiling and a solid door
13 and equipped with a ventilation system which is separately
14 exhausted from the nonsmoking areas of the establishment so that
15 air from the smoking area is not recirculated to the nonsmoking
16 areas and smoke is not backstreamed into the nonsmoking areas.

17 "Electronic smoking device" means an electronic device that can
18 be used to deliver nicotine or other substances to the person
19 inhaling from the device, including, but not limited to, an electronic
20 cigarette, cigar, cigarillo, or pipe.

21 "Indoor public place" means a structurally enclosed place of
22 business, commerce or other service-related activity, whether
23 publicly or privately owned or operated on a for-profit or nonprofit
24 basis, which is generally accessible to the public, including, but not
25 limited to: a commercial or other office building; office or building
26 owned, leased or rented by the State or by a county or municipal
27 government; public and nonpublic elementary or secondary school
28 building; board of education building; theater or concert hall; public
29 library; museum or art gallery; bar; restaurant or other
30 establishment where the principal business is the sale of food for
31 consumption on the premises, including the bar area of the
32 establishment; garage or parking facility; any public conveyance
33 operated on land or water, or in the air, and passenger waiting
34 rooms and platform areas in any stations or terminals thereof; health
35 care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et
36 seq.); patient waiting room of the office of a health care provider
37 licensed pursuant to Title 45 of the Revised Statutes; child care
38 center licensed pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.);
39 race track facility; facility used for the holding of sporting events;
40 ambulatory recreational facility; shopping mall or retail store; hotel,
41 motel or other lodging establishment; apartment building lobby or
42 other public area in an otherwise private building; or a passenger
43 elevator in a building other than a single-family dwelling.

44 "Person having control of an indoor public place or workplace or
45 a public park or beach" means the owner or operator of a
46 commercial or other office building or other indoor public place
47 from whom a workplace or space within the building or indoor

1 public place is leased, or the person having supervisory authority
2 over a public park or beach or that person's designee, as applicable.

3 "Public park or beach" means a State park or forest, a county or
4 municipal park, or a State, county, or municipal beach, but does not
5 include any parking lot that is adjacent to, but outside of, the public
6 park or beach.

7 "Smoking" means the burning of, inhaling from, exhaling the
8 smoke from, or the possession of a lighted cigar, cigarette, pipe or
9 any other matter or substance which contains tobacco or any other
10 matter that can be smoked, or the inhaling or exhaling of smoke or
11 vapor from an electronic smoking device.

12 "State park or forest" means any State owned or leased land,
13 water or facility administered by the Department of Environmental
14 Protection, including, but not limited to, a park, forest, recreational
15 area, marina, historic site, burial site, or natural area, but not
16 including a wildlife management area or reservoir land.

17 "Tobacco retail establishment" means an establishment in which
18 at least 51% of retail business is the sale of tobacco products and
19 accessories, and in which the sale of other products is merely
20 incidental.

21 "Workplace" means a structurally enclosed location or portion
22 thereof at which a person performs any type of service or labor.
23 (cf: P.L.2009, c.182, s.2)

24
25 3. Section 4 of P.L.2005, c.383 (C.26:3D-58) is amended to
26 read as follows:

27 4. a. Smoking is prohibited in an indoor public place or
28 workplace or at a public park or beach, except as otherwise
29 provided in this act.

30 b. Smoking is prohibited in any area of any building of, or on
31 the grounds of, any public or nonpublic elementary or secondary
32 school, regardless of whether the area is an indoor public place or is
33 outdoors.

34 (cf: P.L.2005, c.383, s.4)

35
36 4. Section 5 of P.L.2005, c.383 (C.26:3D-59) is amended to
37 read as follows:

38 5. The provisions of this act shall not apply to:

39 a. any cigar bar or cigar lounge that, in the calendar year
40 ending December 31, 2004, generated 15% or more of its total
41 annual gross income from the on-site sale of tobacco products and
42 the rental of on-site humidors, not including any sales from vending
43 machines, and is registered with the local board of health in the
44 municipality in which the bar or lounge is located. The registration
45 shall remain in effect for one year and shall be renewable only if:
46 (1) in the preceding calendar year, the cigar bar or lounge generated
47 15% or more of its total annual gross income from the on-site sale

1 of tobacco products and the rental of on-site humidors, and (2) the
2 cigar bar or cigar lounge has not expanded its size or changed its
3 location since December 31, 2004;

4 b. any tobacco retail establishment, or any area the tobacco
5 retail establishment provides for the purposes of smoking;

6 c. any tobacco business when the testing of a cigar or pipe
7 tobacco by heating, burning or smoking is a necessary and integral
8 part of the process of making, manufacturing, importing or
9 distributing cigars or pipe tobacco;

10 d. private homes, private residences and private automobiles;

11 e. the area within the perimeter of:

12 (1) any casino as defined in section 6 of P.L.1977, c.110
13 (C.5:12-6) approved by the Casino Control Commission that
14 contains at least 150 stand-alone slot machines, 10 table games, or
15 some combination thereof approved by the commission, which
16 machines and games are available to the public for wagering; and

17 (2) any casino simulcasting facility approved by the Casino
18 Control Commission pursuant to section 4 of P.L.1992, c.19
19 (C.5:12-194) that contains a simulcast counter and dedicated seating
20 for at least 50 simulcast patrons or a simulcast operation and at least
21 10 table games, which simulcast facilities and games are available
22 to the public for wagering; **[and]**

23 f. research laboratories and other facilities that have been
24 approved by the Department of Health to permit smoking for the
25 purpose of medical research related to the health effects of smoking,
26 in an indoor facility that is separately ventilated for the purpose of
27 medical or scientific research that is conducted under physician
28 supervision and has been approved by an Investigational Review
29 Board (IRB), if the facility is used solely and exclusively for
30 clinical research activities;

31 g. A golf course; and

32 h. An area of a municipal or county beach, not to exceed 15
33 percent of the total area of the beach, which is designated by the
34 municipality or county by ordinance or resolution as a smoking
35 area.

36 (cf: P.L. 2017, c.271)

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38 5. Section 7 of P.L.2005, c.383 (C.26:3D-61) is amended to
39 read as follows:

40 7. a. The person having control of an indoor public place or
41 workplace or a public park or beach shall place in every public
42 entrance to the indoor public place or workplace or the public park
43 or beach a sign, which shall be located so as to be clearly visible to
44 the public and shall contain letters or a symbol which contrast in
45 color with the sign, indicating that smoking is prohibited therein,
46 except in such designated areas as provided pursuant to this act.
47 The sign shall also indicate that violators are subject to a fine. The
48 person having control of the indoor public place or workplace or the

1 public park or beach shall post a sign stating "Smoking Permitted"
2 in letters at least one inch in height or marked by the international
3 symbol for "Smoking Permitted" in those areas where smoking is
4 permitted.

5 b. The provisions of this section shall not be construed to
6 prevent a lessee of the workplace, or space within the building or
7 indoor public place, from enforcing the smoking restrictions
8 imposed by the owner or operator of a commercial or other office
9 building or other indoor public place.
10 (cf: P.L.2005, c.383, s.7)

11
12 6. (New section) The Department of Environmental Protection
13 is directed to provide information and assistance to counties and
14 municipalities, as determined appropriate by the Commissioner of
15 Environmental Protection and within the limits of resources
16 available to the department for this purpose, to support smoke-free
17 public parks and beaches.

18
19 7. Section 8 of P.L.2005, c.383 (C.26:3D-62) is amended to
20 read as follows:

21 8. a. The person having control of an indoor public place or
22 workplace or a public park or beach shall order any person smoking
23 in violation of this act to comply with the provisions of this act. A
24 person, after being so ordered, who smokes in violation of this act is
25 subject to a fine of not less than \$250 for the first offense, \$500 for
26 the second offense and \$1,000 for each subsequent offense. A
27 penalty shall be recovered in accordance with the provisions of
28 subsections c. and d. of this section.

29 b. The Department of Health or the local board of health or the
30 board, body, or officers exercising the functions of the local board
31 of health according to law, upon written complaint or having reason
32 to suspect that an indoor public place or workplace or a public park
33 or beach covered by the provisions of this act is or may be in
34 violation of the provisions of this act, shall, by written notification,
35 advise the person having control of the place accordingly, and order
36 appropriate action to be taken. A person receiving that notice who
37 fails or refuses to comply with the order is subject to a fine of not
38 less than \$250 for the first offense, \$500 for the second offense, and
39 \$1,000 for each subsequent offense. In addition to the penalty
40 provided herein, the court may order immediate compliance with
41 the provisions of this act.

42 c. A penalty recovered under the provisions of this act shall be
43 recovered by and in the name of the Commissioner of Health or by
44 and in the name of the local board of health. When the plaintiff is
45 the Commissioner of Health, the penalty recovered shall be paid by
46 the commissioner into the treasury of the State. When the plaintiff
47 is a local board of health, the penalty recovered shall be paid by the

1 local board into the treasury of the municipality where the violation
2 occurred.

3 d. **【A】** The Superior Court or a municipal court shall have
4 jurisdiction over proceedings to enforce and collect any penalty
5 imposed because of a violation of this act if the violation has
6 occurred within the territorial jurisdiction of the court, except that
7 the Superior Court shall have exclusive jurisdiction over violations
8 that occur in an indoor public place or public park or beach that
9 may be issued against a State or local government entity pursuant to
10 subsection b. of this section. The proceedings shall be summary
11 and in accordance with the "Penalty Enforcement Law of 1999,"
12 P.L.1999, c.274 (C.2A:58-10 et seq.). Process shall be in the nature
13 of a summons **【or warrant】** and shall issue only at the suit of the
14 Commissioner of Health, or the local board of health, as the case
15 may be, as plaintiff.

16 e. The penalties provided in subsections a. and b. of this
17 section shall be the only civil remedy for a violation of this act, and
18 there shall be no private right of action against a party for failure to
19 comply with the provisions of this act.

20 (cf: P.L.2012, c.17, s.331)

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22 8. Section 9 of P.L.2005, c.383 (C.26:3D-63) is amended to
23 read as follows:

24 9. The provisions of this act shall supersede any other statute,
25 municipal ordinance and rule or regulation adopted pursuant to law
26 concerning smoking in an indoor public place or workplace or at a
27 public park or beach, except where smoking is prohibited by
28 municipal ordinance under authority of R.S.40:48-1 or 40:48-2, or
29 by any other statute or regulation adopted pursuant to law for
30 purposes of protecting life and property from fire or protecting
31 public health, and except for those provisions of a municipal
32 ordinance which provide restrictions on or prohibitions against
33 smoking equivalent to, or greater than, those provided under this
34 act.

35 (cf: P.L.2005, c.383, s.9)

36

37 9. (New section) The Commissioners of Health and
38 Environmental Protection, pursuant to the "Administrative
39 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and in
40 consultation with each other, shall adopt rules and regulations to
41 effectuate the purposes of this act.

42

43 10. This act shall take effect on the 180th day after enactment,
44 but the Commissioners of Health and Environmental Protection
45 may take such anticipatory administrative action in advance thereof
46 as shall be necessary for the implementation of this act.

STATEMENT

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This bill would extend the provisions of the “New Jersey Smoke Free Air Act,” P.L.2005, c.383 (C.26:3D-55 et seq.), which generally prohibit smoking in indoor public places and workplaces, to apply to public parks and beaches throughout the State.

The smoking prohibition provided for under this bill would apply to any State park or forest, county or municipal park, or State, county, or municipal beach, but would not apply to any parking lot that is adjacent to, but outside of, the public park or beach; any golf course; or any area of a municipal or county beach, not exceeding 15 percent of the total area, which is designated by the municipality or county by ordinance or resolution as a smoking area.

The bill defines “State park or forest” to mean any State owned or leased land, water or facility administered by the Department of Environmental Protection, including, but not limited to, a park, forest, recreational area, marina, historic site, burial site, or natural area, but not including a wildlife management area or reservoir land.

The Department of Environmental Protection is directed to provide information and assistance to counties and municipalities, as determined to be appropriate by the Commissioner of Environmental Protection, and within the limits of resources available to the department for this purpose, to support smoke-free public parks and beaches.

The penalties that currently apply to a person who smokes in an indoor public place or workplace, or to a person having control of the place who fails to comply with an order to enforce the smoking prohibition, in violation of the “New Jersey Smoke Free Air Act,” would apply to a comparable violation of this bill. These include a fine of not less than \$250 for the first offense, \$500 for the second offense and \$1,000 for each subsequent offense. As currently provided under the “New Jersey Smoke Free Air Act,” a penalty recovered through enforcement would be paid to the State Treasury if the plaintiff is the Commissioner of Health, and to the treasury of the municipality in which the violation occurred if the plaintiff is the local board of health. The bill provides that process for a violation may only be served by summons, and not by a summons or warrant as provided under current law. The bill requires that the Superior Court will have exclusive jurisdiction over violations that may be issued against a State or local government entity.

The Commissioners of Health and Environmental Protection, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and in consultation with each other, are directed to adopt rules and regulations to effectuate the purposes of this bill.

The bill takes effect on the 180th day after enactment, but it

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- 1 authorizes the Commissioners of Health and Environmental
- 2 Protection to take anticipatory administrative action in advance of
- 3 the effective date, as necessary for the bill's implementation.